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13 *And Linda Johnson Rice*

14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA

16
17 IN RE TESLA, INC. SECURITIES
18 LITIGATION

Case No. 3:18-cv-04865-EMC

19 **DEFENDANTS' ADMINISTRATIVE**
20 **MOTION TO FILE UNDER SEAL**
21 **DOCUMENTS IN SUPPORT OF THEIR**
22 **OPPOSITION TO PLAINTIFF'S**
23 **MOTION FOR PARTIAL SUMMARY**
24 **JUDGMENT**
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1 **I. INTRODUCTION**

2 Pursuant to Northern District of California Civil Local Rules 7-11 and 79-5, Defendants Tesla,
3 Inc., Elon Musk, Brad W. Buss, Robyn Denholm, Ira Ehrenpreis, Antonio J. Gracias, James Murdoch,
4 Kimbal Musk, and Linda Johnson Rice (together, “Defendants”) bring this Administrative Motion to
5 File Under Seal passages in their Opposition to Plaintiff’s Partial Motion for Summary Judgment (the
6 “Opposition”) (filed concurrently herewith), and confidential exhibits used in support thereof.
7 Pursuant to Civil Local Rule 79-5, this Motion is accompanied by a Proposed Order; Declaration of
8 Nathaniel Smith; and an unredacted version of the Opposition.

9 **II. ARGUMENT**

10 Civil Local Rule 79-5(c) requires that a party seeking to file its own documents under seal
11 must file and serve an administrative motion which articulates the applicable legal standard and the
12 reasons for keeping a document under seal, accompanied by a supporting declaration, and a proposed
13 order that is narrowly tailored. Because Defendant’s motion to seal pertains to a dispositive filing, the
14 “compelling reasons” standard applies. *Kamakana v. City & County of Honolulu*, 447 F.3d 1172,
15 1178–80 (9th Cir. 2006).

16 In the Ninth Circuit, the common law right of access to judicial proceedings “is not absolute
17 and can be overridden given sufficiently compelling reasons for doing so.” *Foltz v. State Farm Mut.*
18 *Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003). In making that determination, “courts should
19 consider all relevant factors, including: the public interest in understanding the judicial process and
20 whether disclosure of the material could result in improper use of the material for scandalous or
21 libelous purposes or infringement upon trade secrets.” *Id.* (citing *Hagestad v. Tragesser*, 49 F.3d
22 1430, 1434 (9th Cir. 1995)). In particular, “compelling reasons sufficient to outweigh the public’s
23 interest in disclosure and justify sealing court records exist when such court files might have become a
24 vehicle for improper purposes, such as the use of records to gratify private spite, promote public
25 scandal, circulate libelous statements, or release trade secrets.” *Kamakana*, 447 F.3d at 1179 (internal
26 quotations omitted).

27 In that context, courts protect “any . . . compilation of information which is used in one’s
28 business, and which gives him an opportunity to obtain an advantage over competitors who do not

1 know or use it.” *Whitewater West Indus., Ltd. v. Pac. Surf Designs, Inc.*, No. 3:17-cv-01118, 2018 WL
 2 3055938, at *2 (S.D. Cal. June 14, 2018). Beyond that, courts recognize that “other sources of
 3 business information that might harm a litigant’s competitive standing may also constitute a
 4 compelling reason to seal.” *Id.*

5 Defendants seek to seal confidential business information regarding Elon Musk’s August 7,
 6 2018 bid to take Tesla private (the “Take Private Bid”), including information regarding a potential
 7 investment by a private, third-party investor in Tesla, communications with Tesla’s Board of
 8 Director’s pertaining to the Take Private Bid, business strategies and advice of Elon Musk’s financial
 9 and legal advisors, and private, non-public communications between and among Tesla executives and
 10 directors, and private communications with third party investors regarding reactions to, advice on,
 11 planning for, and funding of the Take Private Bid, as well as personal communications unrelated to
 12 this litigation, as detailed in the Declaration of Nathaniel Smith, filed concurrently herewith. Courts
 13 routinely find that the sensitivity of such information justifies keeping such information sealed. *See,*
 14 *e.g., Aya Healthcare Servs., Inc. v. AMN Healthcare, Inc.*, No. 17CV205-MMA (MDD), 2020 WL
 15 1911502, at *3 (S.D. Cal. Apr. 20, 2020) (finding compelling reasons to seal “non-public, confidential
 16 information” concerning “commercial relationships,” “agreements,” and “business dealings” between
 17 the parties); *Network Appliance, Inc. v. Sun Microsystems Inc.*, No. C-07-06053 EDL, 2010 WL
 18 841274, at *4 (N.D. Cal. Mar. 10, 2010) (sealing portions of deposition regarding “future business
 19 plans”); *Microsoft Corp. v. Motorola, Inc.*, No. C10-1823JLR, 2012 WL 5476846 at *4 (W.D. Wash.
 20 Nov. 12, 2012) (sealing content related to company’s “future business plans” and “strategic planning
 21 information”); *In re Qualcomm Litig.*, No. 3:17-CV-0108-GPC-MDD, 2018 WL 6252523, at *2 (S.D.
 22 Cal. May 9, 2018) (sealing information subject to confidentiality agreement because disclosure could
 23 harm the party “in future negotiations with existing customers, third-parties, and other entities with
 24 whom they do business”); *see also Lane v. Wells Fargo Bank, N.A.*, No. C 12-04026 WHA, 2013 WL
 25 2627487, at *3 (N.D. Cal. June 11, 2013) (sealing information that explained relationships with
 26 nonparties).

27 Accordingly, Defendants request that the Court seal select portions of Defendants’ Opposition
 28 and deposition excerpts, and the exhibits filed in support thereof, as identified in the table below,

because they contain Defendants' protectable, non-public, confidential business information.

Document	Portion to be Sealed	Designee
Defendants' Opposition	Excerpts	Defendants
Exhibit 76	Entirety	Defendants
Exhibit 81	Entirety	Defendants
Exhibit 94	Entirety	Defendants
Exhibit 105	Entirety	Defendants
Exhibit 106	Entirety	Defendants
Exhibit 109	Entirety	Defendants
Exhibit 121	Entirety	Defendants
Exhibit 182	Entirety	Defendants
Exhibit 255	Entirety	Defendants
Exhibit B	Excerpts	Defendants
Exhibit C	Excerpts	Defendants
Exhibit E	Excerpts	Defendants
Exhibit F	Entirety	Defendants
Exhibit G	Entirety	Defendants
Exhibit H	Entirety	Defendants
Exhibit J	Entirety	Defendants
Exhibit L	Excerpts	Plaintiff
Exhibit O	Excerpts	Defendants
Exhibit P	Excerpts	Defendants
Exhibit Q	Excerpts	Defendants

Public disclosure of Defendants' confidential, non-public documents will cause harm to Tesla by revealing financial, planning, personal, and commercial information that could be misconstrued for improper purposes. Such a release of material, in a piecemeal way, risks that the information will be discussed and spread without the proper context and undermine Defendants' ability to receive a fair

1 trial. This risk of misinformation spreading is heightened because Tesla is one of the most followed
2 companies globally and its CEO, Elon Musk, is one of the most followed individuals in the world.
3 Defendants have narrowly tailored their request to only information meriting sealing.

4 **CONCLUSION**

5 For the foregoing reasons, Defendants respectfully request that the Court grant this
6 Administrative Motion to Seal.

7
8 DATED: February 1, 2022

Respectfully submitted,

9 QUINN EMANUEL URQUHART & SULLIVAN, LLP

10 By: /s/ Alex Spiro

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13 *Robyn Denholm, Ira Ehrenpreis, Antonio J. Gracias,*
14 *James Murdoch, Kimbal Musk, And Linda Johnson Rice*